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PATENT  
Attorney Docket No. 019404-001200US

TOWNSEND and TOWNSEND and CREW LLP

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Bennett Cookson Jr. et al.

Application No.: 10/748,441

Filed: December 29, 2003

For: GENEALOGICAL  
INVESTIGATION AND  
DOCUMENTATION SYSTEMS AND  
METHODS

Confirmation No. 2382

Examiner: Nikolai A. Gishnock

Technology Center/Art Unit: 3715

**APPELLANTS' BRIEF**  
**UNDER 37 CFR §41.37**

Mail Stop Appeal Brief  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Commissioner:

Further to the "Notice of Appeal" and "Pre-Appeal Brief Request For Review" filed on February 12, 2009, and the "Notice Of Panel Decision From Pre-Appeal Brief Review" mailed on February 27, 2009, for the above-referenced application, Appellants submit this Brief on Appeal.

**1. Real Party In Interest**

The Generations Network, Inc., of Provo, Utah, is the real party in interest as the assignee of the above-identified application.

## 2. Related Appeals And Interferences

No other appeals or interferences are known that will directly affect, are directly affected by, or have a bearing on the Board decision in this appeal.

## 3. Status Of Claims

Claims 1-41 are currently pending in the application. All pending claims stand finally rejected pursuant to a final Office Action mailed November 12, 2008. A copy of the claims as rejected is attached hereto in the Claims Appendix.

Claims 16-28 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. **Per the Advisory Action mailed January 29, 2009, Applicant's Request For Reconsideration filed January 8, 2009, overcame the Examiner's rejection of claim 15 under 35 U.S.C. § 112., ¶ 2. Claims 16-28 were rejected by virtue of the dependency from claim 15. Hence, the rejections of claims 15-28 ARE NOT the subject of the appeal.**

Claims 1, 7-15, 18, 19, 21-34, and 38-41 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2002/0032687 to Huff ("Huff"). **This rejection is the subject of the appeal.**

Claims 2 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huff in view of U.S. Patent No. 4,501,559 to Griswold et al. ("Griswold"). **This rejection IS NOT the subject of the appeal.**

Claims 3-6, 17, 20, 35, and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huff in view of U.S. Patent No. 6,389,429 to Kane et al. ("Kane"). **This rejection IS NOT the subject of the appeal.**

#### **4. Status Of Amendments**

The claims have been amended one time. An Amendment With RCE was filed on February 21, 2008, in response to an Advisory Action mailed January 30, 2008. No amendments have been entered subsequent to the final Office Action mailed November 12, 2008. This Appeal Brief is filed in response to the final Office Action mailed November 12, 2008.

#### **5. Summary Of Claimed Subject Matter**

In the following summary, the Appellants have provided exemplary references to sections of the specification and drawings supporting the subject matter defined in the claims as required by 37 C.F.R. § 41.37. The specification and drawings also include additional support for other exemplary embodiments encompassed by the claimed subject matter. Thus, it should be appreciated that the references are intended to be illustrative in nature only.

Claim 1 recites a computerized method of creating a family tree depicted generally at Fig. 2A and described at ¶¶[0034]-[0049]. The method includes, at a host computing system (102), receiving genealogy data from at least one primary source (ref. no. 202); creating one or more node records and one or more link records using the genealogy data, wherein individual node records include at least name data and each individual link record includes relationship data that represents a relationship between individual node records (204); comparing individual node records and identifying pairs of records having similar data (206); for each identified pair of individual node records, comparing related individual node records and deciding based on predetermined criteria whether the identified pair of individual node records represent the same person (208); consolidating the information from a plurality of records determined to represent the same person into a single person record by, at least in part, adding information from a plurality of records determined to represent the same person to the single person record (210); at the host computing system, receiving a request from a user computer to display a family tree (212); using the individual link records, the individual node records, and the

single person records to create a data representation comprising the requested family tree (214); and sending the data representation to the user computer for display (216).

Claim 15 recites a system for creating a family tree depicted generally at Fig. 1 and described at ¶¶[0028]-[0032]. The system includes a host computing system (102), comprising means for receiving genealogy data from at least one primary source (202); and means for sending information to a user computer (216). The host computer system is programmed to: create one or more node records and one or more link records from received genealogy data, wherein individual node records include at least name data and each individual link record includes relationship data that represents a relationship between individual node records (204); compare individual node records and identify pairs of records having similar data (206); for each identified pair of individual node records, compare related individual node records and decide based on predetermined criteria whether the identified pair of individual node records represent the same person (208); consolidate the information from a plurality of records determined to represent the same person into a single person record by, at least in part, adding information from a plurality of records determined to represent the same person to the single person record (210); respond to a request from a user computer to display a family tree by using the individual link records, the individual node records, and the single person records to create a data representation comprising the requested family tree (212); and send the data representation to the user computer (216).

Claim 29 recites a computerized method of creating a family tree generally depicted at Fig. 2A and described at ¶¶[0034]-[0049]. The method includes receiving data at a host computer system that defines a plurality of personas, wherein the data comprises one or more assertions for each persona and wherein each persona represents a person (¶[0034], [0035]); storing each persona as a persona record (204); at the host computer system, receiving a request from a user to provide a family tree, wherein the request comprises at least one assertion (212); identifying an initial persona record (¶[0043]); from the initial persona record, performing a relationship analysis to infer any relationships with other persona records using the assertions of the initial persona record and the other persona records (Fig. 2B); if a relationship is inferred,

assigning at least one relationship type to the relationship between the records (fig. 3D and ¶[0052]); using the persona records and the relationship types to construct a family tree (214); and sending a file comprising at least a portion of the family tree to the user for display (216).

Claim 39 recites a system for creating a family tree generally depicted at fig. 1 and described at ¶¶[0028]-[0032]. The system includes a host computer system (102) configured to: receive data that defines a plurality of personas, wherein the data comprises one or more assertions for each persona and wherein each persona represents a person (¶[0034], [0035]); store each persona as a persona record (204); perform a relationship analysis to infer relationships among persona records using the assertions of the persona records (206); if a relationship is inferred, assign at least one relationship type to the relationship between the records (fig. 3D and ¶[0052]); use the persona records and the relationship types to construct a family tree (214); receive a request from a user to provide a family tree (212); and send a file comprising at least a portion of the family tree to the user (216).

## **6. Grounds Of Rejection To Be Reviewed On Appeal**

Issue 1: Whether claims 1, 7-15, 18, 19, 21-34, and 38-41 were properly rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2002/0032687 to Huff (“Huff”).

## **7. Argument**

Issue 1: Whether claims 1, 7-15, 18, 19, 21-34, and 38-41 were properly rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2002/0032687 to Huff (“Huff”).

The Appellants maintain that the rejections of claims 1, 15, 29, and 39, under 35 U.S.C. § 102(b) are improper. Under 35 U.S.C. § 102 “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). That is not the case here

Huff is cited for anticipating all independent claims but does not teach each and every claim element, either expressly or impliedly, as required for a proper rejection under 35 U.S.C. § 102. Specifically, Huff does not teach “identifying pairs of records having similar data; [and] for each identified pair of individual node records, comparing related individual node records and deciding based on predetermined criteria whether the identified pair of individual node records represent the same person,” as recited in claim 1. In other words, node records that are *related to* pairs of records having similar data are compared. *Predetermined criteria* is then used to determine whether the original records represent the same person. Huff does not teach comparing related node records and using predetermined criteria to assess pairs of records having similar data. Hence, claim 1 is believed to be allowable, at least for this reason. Claim 15 includes a similar element and is believed to be allowable, at least for the foregoing reason.

Regarding the claim elements quoted above, the final Office Action cites Huff, ¶¶[0123] and [0164]. Both of which are reproduced below:

[0123] Overcoming Duplication and Loss. Up to now the genealogy procedures the world has used comprise paper systems or relatively small accumulations of names in linked electronic form on a home PC. Online internet sources are mostly limited to copies of the PC format data or large lists of raw data such as births, deaths, and the like. Nobody has attempted the online accumulation and comparison of data from multiple sources with the goal of accurate linking, and to allow for multiple data interpretations so that a solution or compromise could finally be reached without loss of any contributed data.

[0164] The computer support that can be given to this splicing/hiding process is as follows. The delete transaction contains the number of the name to be deleted, the number of the replacement name, and the user number of the person submitting the transaction. To make sure that the deleting person has done his homework (and keeps it current in the future), the delete record will have an indicator that must be set on to put and keep the transaction in effect. Before the record is stored in the database and the indicator is set on, the computer first counts the connections of the old name to be deleted. It then counts the connections of the name to replace it. The new name must have at least as many links backward (plus spouse and children--sideways and forward) as does the old name. This check is not conclusive, but it ensures that the person making the deletion has done his homework. To limit search time, the search on the new name need only go back far enough to show that it is equal to or greater than the

old name. Otherwise no switch is set on, and the apparent duplication continues to appear.

The claimed elements are taught nowhere in these citations. The final Office Action makes a number of unsupportable assertions about these teachings to arrive at the rejection. First, the final Office Action (p. 12) states that “Huff teaches comparing records to determine whether they represent the same person.” The Appellants are unable to locate any such teaching. Next, the final Office Action improperly summarizes this as “understood to be identifying records having similar data.” This, however, is an unwarranted summarization of an absent teaching. Moreover, the final Office Action takes the unjustifiable position that “the names and numbers of such spousal and child links are ‘predetermined criteria’, due to the fact that they are previously entered; further, that the method of performing such subsequent analysis is itself ‘predetermined criteria’.” In other words, the reasoning articulated in the final Office Action to reach the rejection imports teaching that is not present, assigns an unwarranted interpretation to the imported teaching, then tortures the result to fit “predetermined criteria” in a manner that essentially strips the words of their meaning. Accordingly, the Appellants respectfully appeal the rejections of claims 1 and 15 for the foregoing reasons.

The Appellants maintain that claims 29 and 39 are allowable because Huff does not teach “perform[ing] a relationship analysis to infer relationships among persona records using the assertions of the persona records; if a relationship is inferred, assign at least one relationship type to the relationship between the records.” In responding to this argument from the Applicant’s prior response, the final Office Action (p. 12) reasons that “Huff’s checking is understood to be inferring a relationship between two records, that is, determining if they represent the same person.” The Appellants maintain that this is an unsupportable summarization of Huff’s “checking.” Further, that Huff assigns an “equality” relationship type to the relationship is crediting Huff with teaching something that Huff simply does not teach. Accordingly, claims 29 and 39 are believed to be allowable, at least for the foregoing reasons.

The remaining claims depend from one of the independent claims discussed above and are believed to be allowable, at least for the reasons stated above.

## 8. Conclusion

For these reasons, it is respectfully submitted that the rejection should be reversed.

Respectfully submitted,

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## 9. Claims Appendix

1. (Previously Presented) A computerized method of creating a family tree, comprising:

- at a host computing system, receiving genealogy data from at least one primary source;
- creating one or more node records and one or more link records using the genealogy data, wherein individual node records include at least name data and each individual link record includes relationship data that represents a relationship between individual node records;
- comparing individual node records and identifying pairs of records having similar data;
- for each identified pair of individual node records, comparing related individual node records and deciding based on predetermined criteria whether the identified pair of individual node records represent the same person;
- consolidating the information from a plurality of records determined to represent the same person into a single person record by, at least in part, adding information from a plurality of records determined to represent the same person to the single person record;
- at the host computing system, receiving a request from a user computer to display a family tree;
- using the individual link records, the individual node records, and the single person records to create a data representation comprising the requested family tree; and
- sending the data representation to the user computer for display.

2. (Original) The method of claim 1, further comprising:  
using the genealogy data to create surname records, wherein a surname record includes a surname and a number representing the number of times the corresponding surname is encountered in the genealogy data; and  
using the surname records to partition the individual node records into groups prior to comparing the individual node records.
3. (Original) The method of claim 1, wherein comparing individual node records and identifying pairs of records having similar names comprises calculating a score representing the likelihood that the identified pair of individual node records represent the same person.
4. (Original) The method of claim 3, wherein comparing related individual node records and deciding based on predetermined criteria whether the identified pair of individual node records represent the same person comprises revising the score based on the comparison.
5. (Original) The method of claim 3, wherein the individual node records span only a single generation.
6. (Original) The method of claim 3, wherein the individual node records span multiple generations.
7. (Original) The method of claim 1, wherein receiving genealogy data from at least one source comprises receiving genealogy data from a source selected from the group consisting of the Ancestry World Tree system, a Social Security Death Index database, the World Family Tree system, a birth certificate database, a death certificate database, a marriage certificate database, an adoption database, a draft registration database, a veterans database, a military database, a property records database, a census database, a voter registration database, a phone database, an address database, a newspaper database, an immigration database, a family

history records database, a local history records database, a business registration database, and a motor vehicle database.

8. (Original) The method of claim 1, wherein receiving genealogy data from at least one source comprises receiving genealogy data as a GEDCOM file.

9. (Original) The method of claim 1, wherein using the individual link records, the individual node records, and the single person records to create a file comprising the requested family tree comprises including alternatives for relationships for display to a user, the method further comprising:

receiving a selection representing a user choice among the alternatives;  
using the selection to update the family tree; and  
storing the selection.

10. (Original) The method of claim 9, further comprising:  
receiving new information that changes the family tree; and  
providing the user an opportunity to revise the selection.

11. (Original) The method of claim 1, further comprising:  
receiving information from a user, wherein the information comprises a selection from the group consisting of a digital picture, a text file, genealogy data, a user-entered text file, a sound file, a video file, and any computer readable file; and  
storing the information, whereby the information is available to other users.

12. (Original) The method of claim 1, further comprising:  
subsequent to sending the file to the user computer, receiving additional genealogy data that changes the family; and  
notifying the user of the changes.

13. (Original) The method of claim 12, wherein notifying the user comprises a selection from the group consisting of: sending the user an email; sending a file to the user upon

the user accessing the host computing system, wherein the file comprises alternatives; and displaying a notification to the user upon the user accessing the host computing system.

14. (Original) The method of claim 1, further comprising:  
subsequent to sending the file to the user computer, receiving a request from the user computer to send more detailed information relating to the family tree;  
using the individual link records, the individual node records, and the single person records, to compile the more detailed information; and  
sending the more detailed information to the user computer.

15. (Previously Presented) A system for creating a family tree, comprising:  
a host computing system, comprising  
means for receiving genealogy data from at least one primary source; and  
means for sending information to a user computer;  
wherein the host computer system is programmed to:  
create one or more node records and one or more link records from received genealogy data, wherein individual node records include at least name data and each individual link record includes relationship data that represents a relationship between individual node records;  
compare individual node records and identify pairs of records having similar data;  
for each identified pair of individual node records, compare related individual node records and decide based on predetermined criteria whether the identified pair of individual node records represent the same person;  
consolidate the information from a plurality of records determined to represent the same person into a single person record by, at least in part, adding information from a plurality of records determined to represent the same person to the single person record;  
respond to a request from a user computer to display a family tree by using the individual link records, the individual node records, and the single person records to create a data representation comprising the requested family tree; and

send the data representation to the user computer.

16. (Original) The system of claim 15, wherein the host computer system is further programmed to:

use the genealogy data to create surname records, wherein a surname record includes a surname and a number representing the number of times the corresponding surname is encountered in the genealogy data; and

use the surname records to partition the individual node records into groups prior to comparing the individual node records.

17. (Original) The system of claim 15, wherein the host computer system is further programmed to calculate a score representing the likelihood that the identified pair of individual node records represent the same person.

18. (Original) The system of claim 15, wherein the individual node records span only a single generation.

19. (Original) The system of claim 15, wherein the individual node records span multiple generations.

20. (Original) The system of claim 17, wherein the host computer system is further programmed to revise the score based on the comparison.

21. (Original) The system of claim 15, wherein the means for receiving genealogy data from at least one source comprises an interface to a source selected from the group consisting of the Ancestry World Tree system, a Social Security Death Index database, the World Family Tree system, a birth certificate database, a death certificate database, a marriage certificate database, an adoption database, a draft registration database, a veterans database, a military database, a property records database, a census database, a voter registration database, a phone database, an address database, a newspaper database, an immigration database, a family

history records database, a local history records database, a business registration database, and a motor vehicle database.

22. (Original) The system of claim 15, wherein the host computer system is further programmed to receive genealogy data as a GEDCOM file.

23. (Original) The system of claim 15, wherein the host computer system is further programmed to:

- include alternatives for relationships for display to a user;
- receive a selection representing a user choice among the alternatives;
- use the selection to update the family tree; and
- store the selection.

24. (Original) The system of claim 23, wherein the host computer system is further programmed to:

- receive new information that changes the family tree; and
- provide the user an opportunity to revise the selection.

25. (Original) The system of claim 15, wherein the host computer system is further programmed to:

- receive information from a user, wherein the information comprises a selection from the group consisting of a digital picture, a text file, genealogy data, a user-entered text file, a sound file, a video file, and any computer readable file; and
- store the information, whereby the information is available to other users.

26. (Original) The system of claim 15, wherein the host computer system is further programmed to:

- receive additional genealogy data that changes the family; and
- notify the user of the changes.

27. (Original) The system of claim 26, wherein the host computer system is further programmed to:

- send the user an email;
- send a file to the user upon the user accessing the host computing system, wherein the file comprises alternatives; and
- display a notification to the user upon the user accessing the host computing system.

28. (Original) The system of claim 15, wherein the host computer system is further programmed to:

- receive a request from the user computer to send more detailed information relating to the family tree;
- use the individual link records, the individual node records, and the single person records, to compile the more detailed information; and
- send the more detailed information to the user computer.

29. (Previously Presented) A computerized method of creating a family tree, comprising:

- receiving data at a host computer system that defines a plurality of personas, wherein the data comprises one or more assertions for each persona and wherein each persona represents a person;
- storing each persona as a persona record;
- at the host computer system, receiving a request from a user to provide a family tree, wherein the request comprises at least one assertion;
- identifying an initial persona record;
- from the initial persona record, performing a relationship analysis to infer any relationships with other persona records using the assertions of the initial persona record and the other persona records;
- if a relationship is inferred, assigning at least one relationship type to the relationship between the records;

using the persona records and the relationship types to construct a family tree; and sending a file comprising at least a portion of the family tree to the user for display.

30. (Original) The method of claim 29, further comprising repeating the attempting to infer and assigning steps for the other persona records until no additional relationships are inferred.

31. (Original) The method of claim 29, wherein the initial persona record is identified using the last name provided by the user.

32. (Original) The method of claim 29, wherein the relationship analysis is performed prior to receiving the request from the user.

33. (Original) The method of claim 29, wherein the assertions for a particular persona record originate from a single source.

34. (Original) The method of claim 33, wherein the single source comprises a selection from the group consisting of a census record, a newspaper article, a user input record, and a government record.

35. (Original) The method of claim 29, further comprising using the assertions of the initial persona record and the other persona records to assign a score to each relationship, wherein the score represents a likelihood that the relationship correctly reflects a relationship between the persons represented by the personas.

36. (Original) The method of claim 29, wherein relationship types comprise a selection from the group consisting of same person, parent-child, spouse, sibling, grandparent-grandchild, uncle/aunt-niece/nephew, and cousin.

37. (Original) The method of claim 29, further comprising using the assertions of the initial persona record and other persona records to assign assertion scores to assertions of



persona records, wherein assertion scores represent a likelihood that a particular assertion correctly reflects an analogous assertion of the person represented by the persona.

38. (Original) The method of claim 29, wherein assertions comprise a selection from the group consisting of name, birth day, death day, birth city, and death city.

39. (Original) A system for creating a family tree, comprising:  
a host computer system configured to:  
receive data that defines a plurality of personas, wherein the data comprises one or more assertions for each persona and wherein each persona represents a person;  
store each persona as a persona record;  
perform a relationship analysis to infer relationships among persona records using the assertions of the persona records;  
if a relationship is inferred, assign at least one relationship type to the relationship between the records;  
use the persona records and the relationship types to construct a family tree;  
receive a request from a user to provide a family tree; and  
send a file comprising at least a portion of the family tree to the user.

40. (Original) The system of claim 39, wherein the request from the user comprises at least a name.

41. (Original) The system of claim 39, wherein the host computer system is operable to perform the relationship analysis in response to the request from the user.

## **10. Evidence Appendix**

No additional evidence is provided.

## **11. Related Proceedings Appendix**

No additional proceedings are in process.